COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 12 of 2004

1. The Commissioner of Income Tax, Dehradun
2. Joint Commissioner of Income Tax, Special Range, Dehradun

.....Appellants

Versus

Oil & Natural Gas Corpn., Tel Bhawan, Dehradun as agent of M/s European Gas Turbine India Ltd., U.K.

..... Respondent

Ld. Standing counsel for the Revenue.
Sri J.P. Joshi, learned counsel for the respondent

Dated: March 07, 2006

Coram: Hon. P.C. Verma, J.
Hon. B.C. Kandpal, J.

Both the parties are ready to argue the matter today.

2. This appeal has been preferred against the order dated 24.11.2003 for the assessment year 1996-97, passed by the Income Tax Appellate Tribunal, (Bench 'C' New Delhi).

3. The substantial question of law framed in the memo of appeal for our consideration is as follows: -

> **Whether on the facts and circumstances of the case, the learned I.T.A.T. was legally justified in upholding the decision of learned CIT(A) that consideration received by the assessee was chargeable to tax under the provisions of Sections 44BB of the Act and not under Section 44-D read with Section 115-A of the Act?**

4. The aforementioned question was considered by a Division Bench of this Court {in which one of us (P.C.Verma,J.) was a member} in the case of *"Commissioner of Income Tax and another vs. O.N.G.C. as agent of M/s Foramer France, Dehradun,* which was decided on 15.12.2005 in Income Tax Appeal No.239 of 2001. In the said judgment, the question framed in the said appeal was answered in favour of the Revenue.

5. Following the judgment of Division Bench of this Court, we allow the appeal.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang